

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS**

DR. PANKAJ MERCHIA,
Plaintiff,

CASE NO. 20-cv-40100-IT

v.

LAMB AND ASSOCIATES, P.C. AND
MARTIN LAMB, ESQ.

Defendants

**DEFENDANTS, LAMB AND ASSOCIATES, P.C. AND MARTIN LAMB, ESQ.
OPPOSITION TO ATTORNEY GILLERAN AND FISHERBROYLES LLP'S
MOTION FOR A 30 DAY STAY
(ECF No. 87)**

The Defendants, Lamb and Associates, P.C., and Martin Lamb, Esq. (collectively, “Lamb”), through their attorneys, oppose Attorney Gilleran’s Motion for a 30-day stay of proceedings (the “Motion”), ECF No. 87. Lamb takes no position on Attorney Gilleran’s request to withdraw as counsel.

As stated more fully below, the requested 30-day stay will prejudice Lamb by needlessly prolonging this meritless litigation where Lamb is ready, willing, and able to move forward with a dispositive motion on Dr. Pankaj Merchia’s (“Dr. Merchia”) original complaint, which, by operation of this Court’s Orders vacating all of its prior Orders granting Dr. Merchia leave to file an amended complaint, remains the operative complaint in this action. Alternatively, Lamb is ready to move forward in this action with scheduling a time to complete initial disclosures and a scheduling conference to begin discovery. In support thereof, Lamb states as follows:

1. Dr. Merchia filed this litigation against Lamb on December 2, 2020, seeking the return of \$400,000 that he wired to Lamb in contemplation of finalizing an agreement with

Pascack VA Group, LLC (“Pascack”) for the purchase and sale of two parcels of property located in Worcester, Massachusetts (the “Properties”). ECF No. 1.

2. As stated in Dr. Merchia’s Verified Complaint, Lamb “the attorney for the seller... in a failed real estate transaction has refused to return the Plaintiff’s full payment of \$400,000....” ECF No. 1, at 5.

3. On December 11 and 14, 2020, Dr. Merchia filed motions for partial summary judgment, ECF Nos. 11 and 12, and a preliminary injunction seeking the Court to Order Lamb to return the \$400,000. ECF No. 14.

4. Lamb answered Dr. Merchia’s complaint on December 23, 2020, ECF no. 17, and filed opposition memorandum on January 11, 2021. ECF Nos. 33 and 34.

5. On January 22, 2021, the Court denied Dr. Merchia’s motion for partial summary judgment and request for a preliminary injunction from the bench. In denying Dr. Merchia’s pending motions, the Court granted Lamb leave to file a third-party complaint in interpleader against Pascack to join Pascack to this action. Thereafter, the Court scheduled a scheduling conference for March 8, 2021.

6. Lamb filed a third-party complaint in interpleader against Pascack on February 5, 2021, ECF No. 50, and provided Pascack’s counsel with a request to waive service on February 26, 2021.

7. On March 1, 2021, Pascack, through its counsel, withdrew its prior objection to Lamb returning the \$400,000 at issue to Dr. Merchia.

8. On March 2, 2021, the Parties submitted their joint report with a proposed scheduling order pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. ECF No. 58.

9. On March 4, 2021, Lamb returned the \$400,000 at issue to Dr. Merchia via fed ex, and Dr. Merchia confirmed receipt on March 5, 2021. Thereafter, Lamb filed a stipulation of dismissal without prejudice as to its third-party claims against Pascack. *See* ECF No. 59.

10. On March 8, 2021, Dr. Merchia's counsel appeared in this matter, which prompted this Court to reschedule the scheduling conference for March 16, 2021. ECF Nos. 62 and 63.

11. As a courtesy, Lamb agreed to postpone the March 16, 2021 scheduling conference based on the representations made by Dr. Merchia in his moving papers regarding a forthcoming motion for leave to file an amended complaint. ECF No. 64. Based on these representations, this Court moved the scheduling conference from March 16, 2021 to April 26, 2021. ECF No. 66. On April 23, 2021, the Court converted the scheduling conference to a status conference. ECF No. 79.

12. During the status conference on April 26, 2021, Dr. Merchia represented to this Court that he intended to move forward with the claims asserted in the proposed First Amended Complaint against additional defendants. Ultimately, Dr. Merchia elected to file a materially different First Amended Complaint, which did not include claims against the third-parties as originally proposed and represented to the Court. ECF Nos. 71, 81, 83.

13. On April 29, 2021, Dr. Merchia represented to this Court that he intended to drop the claims against the proposed new defendants in order to pursue said claims in state court. ECF No. 85. Thereafter, Dr. Merchia's counsel sought to withdraw from this matter and has requested a 30-day stay of proceedings. ECF No. 87.

14. In response, this Court vacated its prior orders granting Dr. Merchia leave to file an amended complaint. ECF No. 88. While not expressly stated, Lamb understands the Court Order to similarly strike the First Amended Complaint that was filed by extension.

15. There has been no substantive movement in this action since March 8, 2021 as a direct result of Dr. Merchia's conduct and unnecessary "game playing" with this Court. Consistent with his conduct in this Court, and in other state and federal courts, Dr. Merchia continues to "play games" to further delay this proceeding that he brought against Lamb.

16. If this Court were to grant Dr. Merchia's request for a 30-day stay of proceedings, Lamb would be prevented from moving forward with a dispositive motion on Dr. Merchia's original complaint since, amongst other things, the controversy concerning the \$400,000 is unquestionably moot, which then calls into question whether the amount in controversy has been satisfied for the purposes of federal jurisdiction, and/or from engaging in discovery to investigate Dr. Merchia's dubious allegations of misconduct.

17. From December 2020 to March 2021, Dr. Merchia represented himself *pro se* in this matter. It is self-evident from Dr. Merchia's past conduct and litigious nature that he is more than capable of pursuing what ever claims he may have without the assistance of counsel.

18. As a result of Dr. Merchia's conduct, Lamb has been forced to remain in this litigation and bear the costs associated with litigation under the guise that Lamb would be able to move forward with dispositive motion practice in response to an amended complaint, or, at the very least, with discovery.

19. Now, Dr. Merchia seeks to further delay this matter for yet another 30-days, which will prevent Lamb from taking any steps to move forward with a dispositive, or, if not

allowed, engaging in discovery in order to position this matter for another dispositive motion at the end of discovery.

20. This Court has every reason to see Dr. Merchia's conduct for what it truly is – game playing. As such, this Court should deny the pending request to further delay this action for an additional 30-days.

CONCLUSION

Based on the foregoing, the defendants LAMB AND ASSOCIATES, P.C. AND MARTIN LAMB, ESQ. respectfully requests that this Court **DENY** the pending request for a 30-day stay of proceedings, sanction Dr. Merchia by allowing Lamb to recover its attorneys' fees and costs associated with the delay caused by Dr. Merchia's conduct, and enter an **ORDER** allowing this matter to proceed forthwith based on Dr. Merchia's original complaint.

Respectfully submitted,

LAMB AND ASSOCIATES, P.C. AND
MARTIN LAMB, ESQ.,

By their attorneys,

/s/ Christopher J. Yagoobian

Katherine L. Kenney, BBO# 637204

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Dated: April 30, 2021

CERTIFICATE OF SERVICE

I, Christopher J. Yagoobian certify that on April 30, 2021, I e-filed and served this document using the CM/ECF system. I further certify that I am not aware of any non-CM/ECF participants who have entered an appearance in this matter.

/s/ Christopher J. Yagoobian
Christopher J. Yagoobian, BBO# 697413

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